IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 462 OF 2004.

1. Shri Jose Claude Rodrigues
   and his wife

2. Smt. Philomena Rodrigues,
   both residents of Cortalim, Goa. ..... Petitioners

versus

1. Shri Pedro Sebastiao Rodrigues
   and his wife

2. Smt. Conceicao Rodrigues,
   both r/o Bairo Chovoli, Cortalim.

3. Smt. Catarina Rodrigues,
   r/o Gabriel Cruz Vaddo,
   Nr. the Railway Gate,
   Utorda, Majorda – Goa. ..... Respondents

Respondents No. 1 to 12, 15 to 18 and 20 are deleted as per order dated 14.10.04.

Shri A. D. Bhobe, Advocate for the Petitioners.

Shri M. B. De Costa, Senior Advocate with Shri J. A. Lobo, Advocate for Respondents No. 1, 2 & 3.

CORAM : B. H. MARLAPALLE, J.

DATE : 5th NOVEMBER, 2004.

ORAL JUDGMENT (PER MARLAPALLE, J.) :

1. Heard Mr. Bhobe. Rule. Mr. Lobo waives service for respondent Nos. 1, 2 & 3 as amended.

2. By consent, rule is taken up for hearing forthwith.

3. Special Civil Suit No. 71/84 which was filed by the present petitioners for partition came to be re-registered as Regular Civil Suit No. 166/00 and the evidence of the parties was closed on 23.08.99 and after re-registration of the suit, the plaintiffs filed an application at Exhibit 59 on or about 26.09.03 in order VI, Rule 17 of C.P.C. for amendment of the plaint. This application came to be rejected by the Learned Civil Judge, Senior Division at Vasco-da-Gama and therefore this Petition.

4. It has been contented by the petitioners that they had acquired additional rights/shares way back in 1983, 1987 and 1999 from some of the defendants and therefore their share had gone up in the suit property but at the same time without affecting the holding of the present respondents No. 1, 2 and 3. The Trial Court noted that earlier amendment application filed on 4.12.01 was withdrawn by the plaintiff on 18.8.03 and the suit was pending for about 19 years. The Trial Court also noted that the share transaction was way back in 1983, 1987 and 1999 and therefore the delay of about 4 years in filing

the amendment application was indefensible. The Court also held that after the evidence was closed, the application was moved about 4 years later.

5. Having regards to the amendment application at Exhibit 59, it is clear that the additional acquisition is part of the suit property but it has changed hands and this acquisition by the plaintiffs is not from the present respondents and therefore no prejudice is likely to be caused to them if the amendment application is allowed for the proper and effective adjudication of the suit for partition, it cannot be said that the amendment sought for is not relevant. Certainly, the petitioners have to blame themselves not only for the latches but even for withdrawing the amendment application filed on 4.12.01. It was submitted by Mr. Bhobe that the petitioners were ill-advised regarding the legal procedures.

6. Be that as it may, ends of justice would be met if amendment application is allowed by levying cost and the suit is directed to be disposed within a fixed period.

7. Hence, the petition allowed and impugned order dated 16.09.04 passed by the Learned Civil Judge, Senior Division at Vasco-da-Gama is hereby quashed and set aside. The application at Exhibit 59 filed in Regular Civil Suit No. 166/00 is hereby allowed but on payment of costs quantified at Rs. 3,000/- and to be deposited with the Legal

Services Authority within 2 weeks.

8. The Trial Court is directed to decide the suit on its own merits as expeditiously as possible and within a period of 6 months from the date of appearance by the parties. Parties to appear before the Trial Court on 29th November, 2004. Rule made absolute in terms of the above order.

B. H. MARLAPALLE, J.

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